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BAILMENT — CONFUSION — GRAIN IN ELEVATORS — WAREHOUSEMAN—LIABILITY.—*Moses* v. *Teetors,* 67 Pacific Rep. 526 (Supreme Court of Kansas, January 11, 1902). The relation of the warehouseman to the depositor of grain in an elevator and the liability of the former by virtue of accidental loss of property are the points to be specially noticed in considering the case of *Moses* v. *Teetors,* from the facts and decision of which the following is an abstract: The defendant, Mrs. Teetors, sent grain to a public warehouse belonging to the plaintiff and had it stored "at owner's risk of loss by fire," and agreed to pay a stipulated price for storage. The custom of the warehouseman, of which the defendant was fully informed, was to commingle grain so deposited for storage with that of like quality belonging to himself, and from such common mass to sell from time to time and replenish with other grain brought to him for storage

or that he should purchase. The identical wheat deposited by Mrs. Teetors was sold by the plaintiff. Some time afterwards a fire destroyed the warehouse with contents, including enough wheat of the quality stored by the defendant to replace the same. It was held that the defendant could not recover the value of the wheat from the plaintiff, inasmuch as plaintiff at all times kept on hand sufficient grain in quantity and quality to replace all of that which was stored with him; and since it was stored at risk of the owner, who unquestionably was Mrs. Teetors, the transaction was a deposit and not a sale, the parties sustaining the relationship to one another of bailor and bailee respectively.

Blackstone defines bailment as a delivery of goods in trust upon a contract, express or implied, that the trust shall be faithfully executed on the part of the bailee. According to Sir William Jones, bailment is a delivery of goods in trust on a contract, express or implied, that the trust shall be duly executed and the goods redelivered as soon as the time or use for which they were bailed shall have elapsed or be performed. Edwards says that authors of accepted authority on the subject generally give five classes of bailment; the fifth, hiring, is a bailment of goods always for a reward, and includes the hire of things for use, hire of deposit or storage, and hire of labor and services to to be performed on the goods delivered. The hire of deposit, such as the storage of goods by commission merchants and warehousemen, concerns the custody, and requires ordinary diligence in the bailee.

Where a warehouseman receives goods for storage of the same general nature and kind as already in store and mixes them together in a common mass, the authorities are not agreed as to the rights of the bailor when the mixing has been done with his assent. In grain elevators the warehouseman has *jus disponendi* over the grain stored with him, and may take any portion of the mass and appropriate it to the use of himself or others on condition that he procure other grain of like quality and value to supply its place. The older view held that the deposit passed the title in the grain to the warehouseman, placing the transaction on the same basis as the deposit of money in a bank. In the case of *Chase* v. *Washburn,* 1 Ohio State, 244, 1853, it was held that where the depositary has the option to return the specific article or another of the same kind and value, the title to the property passes to the depositary as fully as in a case of ordinary sale or exchange. If wheat, therefore, be thrown into a common heap with the understanding or agreement that the party receiving it may take from it at pleasure and appropriate the same to his own use or that of others, on condition that he procure other wheat to supply its place, dominion passes to the depositary, and the transaction is a sale and not a bailment.

The decision in *Wilson* v. *Cooper,* 10 Iowa, 565, 1860, was

that the title to wheat vested in the owners of the mill, when it was the custom of the proprietors of a merchant and exchange flouring mill to receipt for wheat delivered at the mill without special agreement, which receipt entitled the holder to receive at the mill wheat, flour or bran as he should elect; and it was also the custom of the proprietors of the mill to place all wheat thus receipted for in a bin, in which was deposited wheat belonging to them, which customs were known to the plaintiff who delivered wheat to the mill and received the usual receipt therefor. It was held in *Lonergan* v. *Stewart,* 55 Illinois, 44, 1870, that the transaction was a sale where the warehouseman was permitted to return grain of like quality to that stored or a money value. *Richardson* v. *Olmstead,* 74 Illinois, 213, 1874, is in accord. In *Clarke* v. *Shafroth,* 137 Illinois, 393, 1891, it was decided that, where corn was delivered to a warehouseman with the understanding that he might sell all or part of it and either return other corn on demand or pay for the corn at the market price on the day the return was demanded and he sold so much of the corn in his warehouse that he did not have enough left to replace all of the corn thus delivered to him when the warehouse and contents were destroyed by fire, the warehouseman was liable for the value of the corn, since the transaction was a sale and not a bailment. The facts in this last case accord with those of *Chase* v. *Washburn,* and the conclusions reached in the above list of cases were based on the older theory that the deposit passed the title in the grain to the warehouseman. By reason of this view much injustice was occasioned to depositors of grain, and now, generally either by statute or judicial determination, it is the law that a deposit of grain in an elevator is a mere bailment and does not pass the title to the grain. The depositors become the owners as tenants in common of a portion of the mass equal in quantity and value to the amount they have deposited.

In *Rice* v. *Nixon,* 97 Ind. 97, 1884, it was held that a warehouseman, who received grain and stored it in a common bin with his own and that of other depositors, always retailing sufficient to meet all demands, was a bailee and not liable for its destruction by fire not attributable to his own negligence. This decision has been followed in a number of Indiana cases, some of which are: *Lyon* v. *Lenon,* 106 Ind. 567, 1886; *Morningstar* v. *Cunningham,* 110 Ind. 328, 1886; *Woodward* v. *Semans,* 125 Ind. 330, 1890; *Drudge* v. *Leiter,* 18 Ind. App. 694, 1897. In the last case cited it was held, as applied to cases of this kind in the absence of an agreement to the contrary, that the usages of a particular business might be presumed to have entered into and formed a part of the contracts and undertakings of persons engaged in such business and those who deal with them.

Minnesota Gen. Stat. (1878), page 1012, provides that wher-

ever any grain is delivered for storage, such delivery shall be treated as a bailment. *Hall* v. *Pillsbury,* 43 Minn. 33, 1890, decided that if a warehouseman sold as his own any grain in excess of the amount called for by his outstanding receipts, without express consent of the depositors, his sale passed no title, and the depositors, as owners, might follow the grain and recover from the purchaser for a conversion. In accord with this case is *Young* v. *Miles,* 23 Wis. 643, 1869.

Two Ohio cases decided according to the later theory are of special interest in view of *Chase* v. *Washburn,* the well-known case decided according to the older theory. We have the following facts and decision in *O'Dell* v. *Leyda,* 46 Ohio State, 244, 1889: A warehouseman received and stored wheat at owner's risk. Nothing was charged for storage and no time was fixed during which the wheat should remain in store, except that it was to be left until the party storing it should be ready to sell. There was no agreement that the wheat should be mixed with other wheat or that the warehouseman might sell, ship or consume it. The warehouseman mixed it with wheat of his own of the same grade and quality and sold from the common mass, always reserving enough to return to the depositors their proper quantity. It was held that the transaction with each depositor constituted a bailment and not a sale. In *James* v. *Plank,* 48 Ohio State, 255, 1891, the law was declared to be that, where the owner of grain deposited with a warehouseman who knew of the custom to mingle wheat brought for storage with similar wheat owned by the warehouseman and from such common mass the warehouseman had the right to take out of the contents for sale and that he at all times kept on hand an amount sufficient to satisfy all depositors, the transaction was a bailment, and the warehouseman was not liable for loss of wheat by fire without his negligence.

The modern view prevails also in the following cases: *Sexton* v. *Graham,* 53 Iowa, 181, 1880; *Nelson* v. *Brown,* 53 Iowa, 555, 1880; *Cushing* v. *Breed,* 14 Allen (Mass.), 376, 1867; *Warren* v. *Milliken,* 57 Me. 97, 1869; *McBee* v. *Cæsar,* 15 Oregon, 62, 1887; *Pontiac Nat. Bank* v. *Langan,* 28 Ill. App. 401, 1888; *Canadian Nat. Bank* v. *McCrea,* 106 Ill. 281, 1882.

The defendant in *Moses* v. *Teetors* claimed that her theory of the case was supported by *Chase* v. *Washburn.* The court, however, said that it was not in point with the case in bar, because it was not established that the grain company had the option to pay the price instead of returning the wheat to Mrs. Teetors upon demand. The case under consideration, therefore, was decided according to the modern view that in the mingling of grain, the respective owners were tenants in common of the entire mass.

William H. Musser.

NOTES ON RECENT LEADING ARTICLES IN LEGAL PUBLICATIONS.

AMERICAN LAW REVIEW.—May-June.

An American Chancellor. Charles B. Elliott. Address at the Law School of Yale University, March 23, 1903. A very excellent paper, giving a clear impression of the work and character of Kent.

A Commercial Code. Judge Lyman D. Brewster. Paper read at the last meeting of the New York State Bar Association. A vigorous plea for the codification of the law, especially on this subject.

Abraham Lincoln, the Lawyer. Harry Earl Montgomery. A short article, chiefly composed of quotations, making a sort of composite photograph, which may be a very fair likeness of Lincoln as a lawyer.

The Powers of Congress Over Treaties. Herman W. Morris. Address before the New York State Bar Association, January 30, 1903. The apparent conflict between the powers vested by the Constitution in different branches of the Federal Government—the general power of legislation and the treaty-making power—is here well and thoroughly considered, concluding with the decision that the danger of a clash between the two, while always present in theory, is to all intents and purposes non-existent.

How to Get an Expert Opinion. Albert S. Osborn. A short paper showing the evils of the present method, and suggesting what appears to be a very simple and eminently fair way of obtaining the desired expert knowledge, and eliminating the greatest of the evils complained of.

The Taff Vale Case. John G. Steffee. The résumé given in this article, of this now famous case, is clear and accurate. No official report has as yet appeared of the latest decision rendered, but the unofficial report in the *London Times* (newspaper), December 20, 1902, has attracted much attention in this country. Mr. Steffee concludes that the decision in the case is a fair one on most points, but burdened with "bald and useless dicta," detracting from its dignity as a judicial decision, and that it is open to the charge, made against it, of being "judge-made law."

A Court Room in the Visayans. W. F. Norris. A picturesque account of a trial for "robbery in bands" in the Philippines, and incidentally a sketch of existing conditions, other than legal, in those islands.

AMERICAN LAWYER.—May.

The Sources of the American Constitution. Hon. John Woodward. A short article, in which some of the sources of the Constitution are indicated. Judge Woodward takes the usual exception to Mr. Gladstone's declaration that the Constitution of the United States is "the most wonderful work ever struck off at a given time by the brain and purpose of man"; but it surely should not need to be pointed out that Gladstone did not mean to imply that this was done without drawing upon a knowledge of the past experience of mankind. That the men who framed the Constitution had not "sources" from which to draw material for their new work would surely not have occurred to such a man as Mr. Gladstone. The "wonderful work" was in the use made of these sources; not only those mentioned by Judge Woodward, but many others which he has not had space to touch upon.

The Writ of Injunction as a Governmental Agency. John N. Jewett. Repeats the usual mistake as to the meaning of the phrase "created equal." Trite repetitions of things the Declaration of Independence is now supposed to say but does not say have become somewhat wearisomely common. The article is to be continued, and in this instalment the author does not really reach the subject of his text.

A New Phase in Corporation Control. Harrison Standish Smalley. An exposition of the recent legislation in Virginia on the subject of the incorporation and control of corporations. Corporations are made subject to public surveillance and control. A commission is created with wide powers, being made the sole incorporating agency for the state. This legislation is, on the whole, approved by the author.

Great Trials in Fiction. II. Effie Deans. This second of the series presents to us the celebrated trial scene from the "Heart of Midlothian." The scene is given entire.

AMERICAN LAWYER.—June.

The Arrest and Trial of Jesus Viewed from a Legal Standpoint. Justice W. J. Gaynor. A most interesting contribution to the literature of the subject. The procedure of both Roman and Jewish tribunals is clearly explained, many errors commonly accepted corrected, and the whole matter illumined by the touch of a mind peculiarly well adapted to treat of, and in touch with, the subject.

The Writ of Injunction as a Governmental Agency. (*Continued.*) The writer reaches his subject in this concluding part of his paper, and in upholding the writ of injunction as a governmental agency he presents able arguments in an interesting manner. Too great a use of invective and the unrestrained use of invidious adjectives, however, greatly weakens both argument and interest.

Great Trials in Fiction. III. The Last Sentence. Maxwell Gray. The selection is not this time from a classic, but a modern writer. The incident chosen is one to try the writer's skill and the reader's nerves.

CANADIAN LAW REVIEW.—May.

Forged and Raised Cheques and Forged Indorsements. A. W. P. Buchanan. The law is traced through the decisions of the courts, beginning with Lord Mansfield's decision in *Price* v. *Neale,* in 1762, to Lord Alverstone's in *Sheffield Corporation* v. *Barclay,* in 1902. The conclusion is that the tendency of the courts is to hold the banker strictly responsible for loss to his customers and innocent parties.

Sir Walter Scott as a Lawyer. Neil McCrimmon. The preparation of the great novelist for the profession of a lawyer is pleasantly told, as are also a number of anecdotes of his work after that profession was acquired.

Great Criminal Judges. E. B. Bowen-Rowlands. After touching upon some characteristics of Sir Alexander Cockburn, John Duke, Baron Coleridge, is highly eulogized; Lord Russell of Killowen praised as a commanding genius, but Sir James Fitzjames Stephen receives less kindly treatment. The ability of the present recorder of London, Sir Forrest Fulton, is highly praised, and Mr. Justice Wright's humanity and zeal as a reformer noted. Mr. Justice Lawrence and Sir Henry Hawkins receive short but appreciative notice.

London K. C.'s and Their Chambers. A. Wallis Myers. "Could the flagstones which pave the placid courts of the Temple cry out, what memories could they give us," says Mr. Myers, and the sentence has a very familiar sound, but the paper is less conventional than its opening sentence would indicate, although the style is repertorial.

A Canadian Divorce Court. The discussion in the House of Commons regarding the establishment of a divorce court is here given in full from Hansard.

The Evolution of Local Taxation in Ontario. I. Early Local Government. As the sub-title indicates, this first part of the subject is treated as well from the historical as the legal side, and is not the less interesting for that fact.

COLUMBIA LAW REVIEW.—June.

Maritime Lien for Damages. Thomas G. Carver. Contrasts the three systems in force in leading maritime states, and shows that a greater uniformity is much to be desired. The evil of a remedy varying according to the port in which a ship happens to be is naturally great, and the International Maritime Committee has taken up the matter for redress.

Is Suicide Murder? William E. Mikell. After an interesting and exhaustive review of the English law on the subject from the earliest authorities down to the present time, the author concludes that suicide is murder in English law. In the United States, Massachusetts is given as the only state which has passed upon the point, and that state has decided it in accordance with the English view.

Agency Imputed from a "Course of Business." Edward B. Whitney. This doctrine is of quite recent origin. The author of this article claims the first case to be that of *Martin* v. *Webb* in 1884. It has had a swift development in New York, but is still undetermined in the remaining states. The paper does not favor the New York view, but discusses the question impartially and calmly.

HARVARD LAW REVIEW.—June.

The Northern Securities Case and the Sherman Anti-Trust Act. C. C. Langdell. The Sherman Act is first reviewed, and it is declared that the act does not make the acts declared illegal, civil torts; that it is a criminal statute pure and simple, conferring upon courts of equity jurisdiction to restrain such acts. Mr. Langdell concludes that the decision was wrong in averring that the acts complained of constituted a violation of the statute, and that the relief given was not authorized by the act or warranted by any principles of equity. He also claims that no justification of the decree can be given, but that of "the end justifies the means."

Limitations upon the Right of Withdrawal from Public Employment. H. W. Chaplin. This very thoughtful and able article brings out the fact that the law has put into the hands of the workmen "a powerful club." This club they, as yet, have not learned skilfully to use, hardly indeed to use at all. Mr. Chaplin's conclusion that the law is capable of protecting the public from serious loss while employer and employe are settling their quarrels is comforting to a public which already has suffered much.

Retreat from a Murderous Assault. Joseph H. Beale, Jr. The history of the law of self-defense is most carefully traced through the cases in the year books to the time of the treatise writers and the modern reports, and so on up to the present day and the conflicting opinion of our own Supreme Court cited in the first paragraph. Mr. Beale feels that there should be no theoretical doubt as to the principle involved. "No killing can be justified, upon any ground, which was not necessary to secure the desired and permitted result, and it is not necessary to kill in self-defense when the assailed can defend himself by the peaceful though often distasteful method of withdrawing to a place of safety. . . . The interests of the state alone are to be regarded in justifying crime, and those interests require that one man should live rather than that another should stand his ground in a private conflict."

NEW JERSEY LAW JOURNAL.—May.

Antiquated Courts and Miscarriage of Justice. X. Judgments. Charles H. Hartshorne. Shows the evil of the present "antiquated" and inflexible judgments in New Jersey, and makes the showing a convincing argument against present conditions.

YALE REVIEW.—June.

The Beginnings of an Official European Code of Private International Law. Simeon E. Baldwin. The "new interest of our people" in this subject will doubtless make an interesting article more interesting. What has been done toward the suggested code is reviewed and what remains to be done is suggested.

Economic Investigation in the United States. Jacob H. Hollander. The writer shows that in the short time since economic investigation has been pursued in this country much has been done. He also points out that here the field is very wide and of great interest, and suggests that it is now time for work upon broader lines.

Increasing and Diminishing Costs in International Trade. Francis Walker. A misprint has made this article appear as "International Law" in the table of contents, but it is exclusively devoted to costs in international trade, and the subject is developed by the geometrical method and illustrated by tables, charts and diagrams. Some points very interesting to both free traders and protectionists are made, and the article is doubly interesting at a time when England seems inclined to re-open the old argument between the two theories.

The Anthracite Strike Commission's Awards. Peter Roberts. A very impartial résumé of the awards made by the Commission and some criticisms of them. The awards relative to wages are shown to have worked some injustice, and those relative to the weighing of coal are considered the least satisfactory. The revival of the sliding scale is not thought judicious, and the discharge of the "coal and iron police" believed not to be a prudent step.

Suicide in the United States. William B. Bailey. It would seem that the subject could hardly be covered more minutely than it is here. The causes of suicide, the various ages of the suicide, relative ages of men and women, relative causes, the means, the days when committed, even the "favorite" hours, and "favorite" methods, are given in text and table.